IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.MC.No. 558 of 2007()

SC.1869/2001 of ADDL.SESSIONS COURT-TRIAL OF ABKARI ACT CASES,NEYYATTINKARA

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PETITIONER: ACCUSED

KRISHNANKUTTY, S/O. RAGHAVAN NADAR,
KARIKKAKOM PUTHEN VEEDU, ONAMKODU,
SOURIMUTTOM, VENPAKAL DESOM, ATHIYANNOOR VILLAGE,
NEYYATTINKARA.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: ACCUSED

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 558 of 2007

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Dated this the 1st day of March, 2007

O R D E R

This application under Section 482 Cr.P.C. is filed by the petitioner, who is the accused in a prosecution under Section 55(a) of the Kerala Abkari Act. The trial has commenced. Witnesses were examined. Prosecution evidence was closed. The petitioner appears to have filed two petitions before the learned Sessions Judge. First of those petitions was for transfer of the case from that court to any other court. It was dismissed. The second prayer was to recall PWs. 2 and 4 for further cross examination. It was urged that the answers have not been properly recorded and therefore the witnesses have to be recalled.

2. The learned Sessions Judge indulgently permitted the petitioner to recall the witnesses for further cross examination on condition that he deposits witnesses bata and process fee within three days. It is submitted that the amount which is liable to be paid comes to Rs.600/- The petitioner, without making the payment, has rushed to this Court with this petition under Section 482 Cr.P.C.

3. What is the reason? The learned counsel for the petitioner submits that going by Rule 206(1)(c) of the Kerala Criminal Rules of Practice, for witnesses who have been compelled to attend court by a process issued under Section 311 Cr.P.C., bata has to be paid by the Court and the petitioner has no obligation to pay the expenses. I find absolutely no merit in this contention. The petitioner had already been granted opportunity to cross examine the witnesses. The petitioner is seeking the luxury of an opportunity to further cross examine the very same witnesses. It is in these circumstances that the learned Sessions Judge directed that bata must be deposited by the petitioner for such further cross examination of PWs. 2 and 4. The court had invoked its powers under Section 311 Cr.P.C. to recall the witnesses at the instance of the petitioner, who was already given the opportunity to cross examine those witnesses. Rule 206(1)(c) does not evidently relate to the circumstances which are available in this case. Where a court on its own want to summon witnesses under Section 311 Cr.P.C. bata has to be paid by the court. The literal interpretation that in all cases where recall of the witnesses at the instance of the petitioner, who had already cross examined them, is made under Section 311 Cr.P.C. for further

cross examination, bata must be paid by Court, to say the least, cannot be accepted.

4. The learned counsel for the petitioner has raised a further grievance that a readable copy of the deposition has not been made available to the petitioner. He had applied specifically for readable copy, but only a photostat copy has been made available. The counsel prays that manuscript copy of the deposition of the witnesses may be directed to be given. The learned Sessions Judge must specifically consider this request of the petitioner for manuscript copy on the ground that the photostat copy is not readable and pass appropriate orders.

5. This Crl.M.C. is hence dismissed with the above observations.

(R. BASANT)
Judge

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